SUPREME COURT, U. S.
73-1122

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1122

MARIAN VIRGINIA BUXTON, *IN PROPRIA PERSONA*,
Petitioner,

v.

INTERNATIONAL BUSINESS MACHINES CORPORATION,
Respondent.

A Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

MARIAN VIRGINIA BUXTON
Watergate Apartments
428 No. 6 Captain Drive
Emeryville, California
94608
415-654-5185
In Propria Persona

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PETITIONER'S PRAYER

Petitioner, Marian Virginia Buxton, prays that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Second Circuit entered on November 16, 1973 in the above-entitled cause.

MARIAN VIRGINIA BUXTON
Watergate Apartments
428, No. 6 Captain Dr.
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A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S PRAYER

Petitioner, Marian Virginia Buxton, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered on November 16, 1973 in the above entitled cause.

CITATION TO THE OPINION BELOW

The opinion of the United States Court of Appeals for the Second Circuit is printed in the Appendix attached hereto. *Infra* page 22.

CONSTITUTIONAL PROVISIONS INVOLVED

(1) The Fifth Amendment to the United States Constitution provides in pertinent part: "No person shall . . . be deprived of life, liberty or property without due process of law."

(2) Constitutional Law 1 and 2. "A Constitution is . . . the Supreme Law . . . . Its principles and rules rest on the fundamental concept of a Supreme Law expressed in written form in accordance with which all private rights must be determined and all public authorities administered.

(3) Criminal Liability for depriving or conspiring to deprive a person of his civil rights. Civil Rights Act of 1964 No. 16.

4. Liability in damages under Civil Rights Laws for Conspiracy to deprive a person of his Civil Rights. Civil Rights Law No. 8 U.S.C. pp. 439.

(5) Digest of Conspiracy to Involuntary Servitude and Peonage, Constitutional Law No. 101.

(6) Civil Rights Decision of the United States Supreme Court in 1971. Griffin, Eugene *et al.* Petitioners v. Breckenridge, Lavon *et al.*, 403 U.S. 88, 29 L Ed. pp. 338-351, Civil Rights Decision of the U.S. Supreme Court in 1971. This action was based on 42 U.S.C. 1985 (3), which authorizes the recovery of damages where two or more persons conspire or go in disguise on the highway or on the premises of another for the purpose of depriving any person or class of persons of the equal protection of the laws or of equal privileges and immunities under the laws.

(7) The citizen's "Right to a Speedy and Public Trial", Constitution of the United States Anno: Amendment No. 6, Senate Document No. 37, 88th Congressional Law U.S. p. 1000.

(8) The Federal Tort Claims Act, pages 762-767 Construction and Application of 28 U.S.C.S. No. 2675 (a) as amended in 1966 and implementing regulations requiring presentation of claim to and denial of claim by a Federal Agency before Court Action can be instituted against the United States under the Federal Tort Claims Act pp. 762-767 Vol. 13, ALR Lawyer's Cooperative Publishing Company, Rochester, New York 1972.

JURISDICTION

(1) The jurisdiction of this court, the Supreme Court of the United States to issue the Writ of Certiorari in this Civil Action arises from the following actions: torts, tampering with the docket at the level of the U.S. District Court, denial of the right to a speedy and public trial, denial of the right to any courtroom hearing at all, denial

of the right to a three judge panel at the level of the U.S. District Court, the forcible imposition of a U. S. Court Judge who shows absolute refusal to read the facts as presentation with exhibits and brief, or to allow courtroom testimony, witnesses, or to consider the extensive awards of the California Superior Court which is quite independent of any New York Judge's actions, whether they be against a New York Corporation or not. The Judge has additionally conspired to deprive the petitioner of life, liberty, and property without any courtroom hearing or witnesses, even in the face of already established facts, testimony and decisions of the California Courts, and the affidavits of six lawyers. Citations 1, 2, 20, 21, 24, 25, 26 in the Appendix of Authorities, Statutes and Cases.

(2) This Action has been transferred back and forth from the United States District Court and the U.S. Appeals Court for the Second Circuit with a variety of inconclusive orders resulting in repeated refusals to hear the case in open Court despite the fact that on one occasion, the petitioner was brought all the way to New York from California and Hawaii, to spend three minutes in a courtroom in which the respondent summoned to court, failed to appear, failed to answer the complaint within the required time, and in writing, and by notarized statements repeated perjury after perjury in the face of police statements, affidavits of courtroom action in California, and legal documents filed with the Clerk of the Court. All of this transpired on the dead estate and body of a decorated veteran, a presidential appointee, Lt. Commander (ret.) James Morgan Buxton, and the petitioner, a classified slave whose research and travel are used free of charge in defiance of the law of invasion of privacy and cited openly by the judges of the U.S. District Court in New York City and the judges of the U.S. Court of Appeals for the Sec-

ond Circuit. Citations 7, 8, 9, 10, 11, 12, 13, 14, and 18. Appendix of Authorities, Statutes, and Cases.

(3) The whole case is in default to such an extent that the indignation of six eminent attorneys has been reported to the Justice Department and to the State Court. It is quite impossible for a U.S. District Court to ignore the transactions and decisions of the Superior Court of California and the efforts of six eminent attorneys, and to conspire additionally to deprive petitioner of her civil rights by knowingly forcing a marriage, and a confiscation of the petitioner's own property and the Georgia and Florida possessions of her husband to ignore the outright murder of her distinguished, aged husband. Citations 24, 25, and 26, Appendix of Authorities, etc.

STATEMENT OF THE CASE

(1) The petitioner has presented the problem of the various torts, the tampering of the docket, and the inability of the petitioner to seek and to obtain redress in the open courtroom of the United States Courts, to the Federal Bureau of Investigation, to the President of the United States, to the United States Attorney and to the Attorneys and counsels of the United States Supreme Court by telephone, and to the Government of California and Hawaii in writing. Also petitioner has informed and has prayed the U.S. Government and the Court to remit her property, savings, and stocks, and the estate of her husband so that she may leave the country for a more decent and attractive citizenship.

(2) Since it is possible to the respondent to round up, with the assistance of police services and the data processing services available to the respondent, all of the properties, bank accounts, stocks, securities, and autos which now amount to more than $300,000 remaining unsold and untransferred by this couple, petitioner and her retired, de-

ceased naval officer husband, there is no reason for more than one year of delay at the beck and call of an invisible judge of the United States District Court whose final "Opinion" is irrational and is imposed upon a docket which is already transported and docketed in the United States Court of Appeals as of October 10, 1973, by petitioner in person.

(3) Since the various conversations of the Attorney for the respondent with the United States Magistrate Raby in the Federal Courthouse in Southern District New York were reported to the petitioner by Magistrate Raby as having disclosed the fact that petitioner is supposed to have handed over $225,000 worth of community property International Business Machines Corporation stock for no remuneration whatever, emphatically a lie, there is little recourse other than the Supreme Court, United States, District of Columbia.

(4) At the will and testimony of the frighteened husband of petitioner, the State of California Superior Court has already listed for the maintenance of support of the "wife" petitioner, and the IBM Corporation has kindly paid on the west coast, the hospital bill for the "wife" recently after surgery. The listing included 226 shares of IBM stock and extensive other properties, monies, and household goods, sporting goods, and investments. None has been left in the State of California despite the orders of this Court, the Superior Court of California, sharply to deliver the community property to the court for accounting, the reason being an obvious perjury, constant complaints of blackmail on the part of aged Lt. Commander (ret.) Buxton, and various frights, litigations, and pestilences of some authorities.

(5) Furthermore, the emphatic statements of the "wife" that she was unwilling to participate in the pornography and the repulsive quarrelings of Americans any longer and

is intending to leave the continent of North America should be considered within the civil rights of the Constitution of the United States which supposedly controls the conspiratorial actions of Judge C.M. Metzner if necessary, to defraud the lady of her lifelong earnings.. California does not recognize any of the litigations because so far no community property has been delivered except that of petitioner and to date those contributions amount to some several hundred thousand dollars with all donations, acquisition, and certificates of various holding donated, including a forged signature or none at all on mansion at Rose Court Lafayette, bank account, automobile, furnishings, clothing and charges for transportation, etc., for a jury trial for sanity.

(6) Having conferred with representatives of the Defense Department and the government, if there is no objection, it is possible to sue within the court system, to collect the obligations and to depart a France and to be "free", since IBM is now informed by petitioner that the U.S. Court in the District of Columbia has verified that retired Lt. Commander J. M. Buxton is really deceased.

(7) This Corporation called the International Business Machines Corporation is one that is rather dear to the heart of petitioner since the members of the work force, and the International offices of IBM are rather congenial, know most all the people, and have tried to maintain the the friendly spirit of the IBM family.

(8) However, much to the sorrow of the International and the west coast contingent, the petitioner made the foolish mistake of spending hundreds of dollars to journey to New York to install and file the suit. It could equally well be installed in France, England, Japan, China, or Indonesia, or wherever there is an officer of IBM except that in California, the officers are willing but not able to

collect any money from the Board of Directors without a suit from our able Governor, Mr. Reagan, forcing the home office and the Board of Directors to pay for the contract they have negotiated and for the maintenance of their capable employees while willing to legally assist in the war effort.

(9) Spending millions of dollars to fight Vietnamese, it is possible for IBM'ers to seek refuge from conspiratorial confiscations of their property in Vietnam, Korea, Laos, Hong-Kong, Japan, London, Paris, and elsewhere, even to change their nationality. Petitioner is a widow of a decorated veteran and since she is a classified scholar, she demands and prays daily for the funeral of her classified husband for the departure with the return of their savings, property, and the bequests of her husband.

(10) Since the home of the couple, petitioner and her husband has been in Hawaii, and is so listed in the Directory of the Episcopal Church for the clergy and their wives ever since 1965, it seems appropriate to pray of the Honorable Supreme Court, the return of the property, the pension and damage suit in order to return home.

(11) Surely it is not too much to ask remuneration for forged travelers' checks, bank checks, title deeds, stock certificates and automobile ownership certificates, stolen bank notes, jewelry, to depart for some other place to live. Amongst the matters involved in these criminal transfers has been the mansion at Rose Court, Lafayette, and the trade in of plaintiff's home, a duplex in Morgan, both in California, the family home in Hawaii, always the home of petitioner, three autos, bank accounts, stocks, bonds, household goods, and clothing, much of which has been established as having been the sole property of

the petitioner, head of a household, and legal guardian of her son, and a practicing medical clinic psychologist before remarriage.

(12) Petitioner has sought the assistance of the Police of California; of Hawaii; and the services and counsels of various legal representatives of the California State Bar Association through Attorney Conklin, University of California Attorney Mr. Freund, Jane Barnum, an Attorney of Mills College graduation, Attorney Robert Athey, Attorney Tuttle of Auburn, California, Attorney Roland Iverson, Attorney Bart Prom, Attorney August Ginocchio, all California Attorneys. In addition she has sought a position with the United States Bureau of Hard Narcotics and Dangerous Drugs again, and has been accorded a physical examination and a psychiatric interview, and an assignment to Terminal Island for employment.

(13) Petitioner has received affidavits from the respondent concerning the survivors' pension paid for by the deceased Reverend Mr. Buxton from his pay check during thirty four years of employment with the International Business Machines Corporation. Petitioner has requested reissuance or return of lost or usurped stock from respondent, and has received in response, only payment of the hospital bill by International Business Machines Corporation on the west coast for the "wife", from the International Business Machines Corporation major medical family hospitalization insurance plan.

(14) Relatives of the departed Mr. J.M. Buxton, Mrs. Marietta Parker of New Port Richey, Florida, and his

nephew, John Parker of Connecticut simply state that their brother and uncle is "long gone". No police officer, no registrar of vital statistics, no physician, and no church official has seen the real and rather frail elderly perpetual deacon for more than five years. He has not been seen in Hawaii in more than eight years.

REASONS FOR GRANTING THE WRIT

(1) The most important legal issue is the conspiracy to defraud which is so bad in this action that it was necessary to have the docket certified to establish lost motions, inconclusive orders, collusion and conspiracy to defraud by the wilfully erroneous or misconceptions in statements of Judges who have never seen the petitioner, would not hold any court hearing, hear any testimony or witnesses, and who along with the Congress have utilized the reports of travel research with the various colleagues, University research, and the person invasion of privacy data until it is sickening. They have ignored the pleas of the United States Appeals Court panel of three Judges for a "rehearing", they have ignored the rules 7(b) and (11) of the Rules of the United States District Courts which state categorically that "If a motion is signed with intent to defeat the purpose of Rule (11), it may be stricken as sham and false; and secondly, "If a pleading is signed with intent to defeat the purpose of this rule, Rule (11) it may be stricken as sham and false." Please see Citations 20 and 21, Authorities, etc.

(2) The second most important legal issue is the conspiracy on the part of respondent to exploit, to ridicule, and to degrade with ridiculous sexual remarks, an older couple who slept in separate beds, and who were prominently associated with religious, military, and classified

scholarly groups, and during a time in which the petitioner's husband was engaged in a top security contract with the Navy.

(3) The Corporation, respondent, additinally has been aware of imposters in the home of petitioner, and has harried an older couple, petitioner and her husband, their retired employee into daily, weekly, and monthly visits with physicians which were unnecessary and far beyond the necessities of maintaining health. Husband of petitioner at various time during the marriage accused the employer, IBM of trying to blackmail him, and in retrospect, it seems possible that they might have brought some pressure to bear on the Reverend Mr. Buxton. These complaints and actions from the basis for an actionable conspiracy (16, Am. Jr. 2d Conspiracy No. 50, 51, 53, 56, American Journal of Monopolies, Combinations, and Restraints of Trade 1st Ed.) and come under the surveillance of the Crime Control Act of 1968.

(4) The last legal issue is the stream of torts which have since the inception of this lengthy case, issued from the bench, inasmuch as no amount of exhibits, consultations with the Pro Se clerk, a graduate lawyer, conferences with the clerk of the Judge, Mr. Steinberg, and pleas for a courtroom hearing have resulted in anything but fantastic remarks from an unseen Judge who states facts which are not true, necessitating remostrative pleas to the Clerk of the Court, and the Federal Bureau of Investigation office at Foley Square, New York and in Washington, D.C.

SUMMARY OF THE ARGUMENT

(1) Since the argument of the respondent that the husband of petitioner, the Reverend Mr. Buxton is not dead,

and is living in Dallas, Texas has been quite denied by the authorities of Dallas, Texas, and since the agents of the FBI, the ministers of the Episcopal Church, the police who are still working on the case from the Emeryville, California police investigator's office have kindly informed petitioner and the relatives of Lt. Commander (ret) that no person of that description has been seen recently in any state of the U.S.A., and since the Court orders included in this petition clarify the vital statistics and marital status of petitioner and the couple, petitioner is quite firmly of the impression that the Attorney for IBM is telling wilful falsehood in an attempt to harass, alienate and defraud the married couple, and the widow, the petitioner.

(2) Since the Lt. Commander James Morgan Buxton (ret) is or would be if alive, seventy one years of age, was a graduate of the University of Vermont, a decorated veteran, an Episcopal Deacon licensed to preach in the States of California and Hawaii, it is quite easy to identify the husband of petitioner who was on civilian contract with a high security rating from the Navy until 1965 when he retired, and was a Presidential appointee to the Supply Centers of the Navy in the USNR. The briefs of IBM make statement after statement to the fact that the petitioner and her husband are divorced, a wilful, slanderous perjury which is notarized in their motions, and documents attached herewith verify the marital status of petitioner and the retired IBM employee, her husband. On the west coast, the IBM Corporation addresses petitioner as the "wife" which would be suitable if petitioner had the family or the ordered income and/or her property and the family home, but petitioner has none of these assets and the husband is dead.

(3) Many lawyers are involved, two of whom are represented in the exhibits, both of whom are alive, in good

health and available for statements. Their letters and court documents represent the couple as being not divorced, no separation of property having occurred, and intending no divorce. Therefore, petitioner argues that the notarized perjuries of the Attorney and the benefits manager are conspiratorial to injure, defraud, to deprive of civil rights and to slander the petitioner.

(4) Lastly it is within the possibility and power of the Corporation, the respondent, to reissue, to return, or to reimburse the petitioner for 226 shares of IBM stock owned in community property by the couple, Mr. and Mrs. James Morgan Buxton, and to return the properties, bank accounts and other belongings which they have caused to be dissipated, lost, and passed around in their management. Please see Citations 8, 11, 12, 12, 13, 16, 17, 22, 23. This company is being sued by the Federal Government and has been found guilty of monopolistic illegal practices on various counts known to the Securities and Exchange Commission, and it is quite likely they have taken the stock and property to add to their capital investment.

CONCLUSION

(1) Petitioner prays order for a Writ of Certiorari to issue to the United States Court of Appeals for the Second Circuit for the reissue of the $225,000 worth of IBM stock certificates, and the various properties which they have caused to be defrauded from the petitioner and her deceased or disappeared husband.

(2) Petitioner prays Writ of Certiorari to the United States Court of Appeals for the Second Circuit to pay the family income and family community property income or the court order support payments in the arrears, and

the survivor's pension to the petitioner, according to the orders of the Superior Court of California and per agreement as to the pension witnessed by several lawyers.

(3) Petitioner also prays a Writ of Certiorari to the United States Appeals Court for the Second Circuit for the payment of damages and expenses incurred through tort, perjury, wilful falsehood, slander, manipulation of stock certificates and real property, coercion and intimidation to petitioner and her aged husband. Petitioner prays Writ of Certiorari to enjoin the New York Office of IBM to pay these damages and payments promptly in person to the Petitioner or by certified check to the bank account, and to refrain from further defamation, coercion, swindle and intimidation in this Civil Action.

Respectfully submitted,

Marian Virginia Buxton
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Emeryville, California
94608

Service on the respondent
by notarized affidavit

Scott E. Wollaston, Attorney
and the Officers and President
of IBM, Frank T. Cary, *et al.*,
Old Orchard Road
Armonk, New York 10504

APPENDIX

SCHEDULE OF CASES, STATUTES, AND POINTS OF AUTHORITY

1. Administrative Law Nos. 710, 711, Am. Jur. 2d Statutory Methods of Obtaining Review of Actions of Administrative agencies.

2. Amendments to Rules of Civil Procedure for the U.S. District Courts; Supplemental Briefs of the U.S. Courts, p. 1037, Vol. 398, *U.S. Reports*, October Term, 1969, May 18 to June 19, 1970.

3. Civil Rights Act of 1964, No. 2000(b)(3), prohibiting discrimination in places of exhibition or entertainment, page 439, No. 201(b)(3) and related provisions (42 U.S.C.), p. 439.

4. Civil Rights Act No. 16; 15 Am. Jur. 2d.

5. Constitutional Amendments: The Thirteenth Amendment of the Constitution of the U.S.A., No. 2, 42 U.S.C. 1985(3).

6. Constitutional Law No. 1: 16 Am. Jur. 2d, Constitutional Law Nos. 1, 2, p. 151,

> "A Constitution is . . . the supreme law . . . Its principles and rules rest on the fundamental concept of a supreme law expressed in written form in accordance with which all private rights must be determined and all public authority administered. . . ." 16 Am. Jur. 2d, Constitutional Law Nos. 1, 2, p. 151.

7. *Criminal Liability*, under 16, pp. 241, 242, for depriving or conspiring to deprive a person of his civil rights, 20 L.Ed. 2d, 1454.

8. Derivative Actions by Shareholder, Rule 23.1 (Investment Securities), p. 404, *U.S. Supreme Court Digest.*

9. Digest of Conspiracy, No. 17, U.S. L.Ed., Constitutional Law No. 101, *Involuntary Servitude and Peonage,* No. 1.

10. Digests of Civil Rights, No. 1.3 Ed., Index to Anno. Civil Rights, Conspiracy, Discrimination.

11. Forgery, Fraud, and Misrepresentation as Grounds for Cancellation of Deeds, pp. 139, 142, 145; 23 Am. Jur. 2d, *Deeds,*

> "A deed executed under such circumstances is ineffective to pass title even to an innocent purchaser."

12. Fraud and Deceit, Anderson's *Uniform Commercial Code,* Text, Cases, Commentary No. 4, 2d Ed., pp. 13-14; Code Sections 9-101, 10-104, Forged or Unauthorized Signatures, official Code comment No. 9, 102:1, Article 9.

13. Frauds, Statute of Frauds. Statute No. 8-319.1, p. 670. Investment Securities Nos. 8-104.1 to 8-104.2, p. 673; No. 8-105.1, p. 698; No. 8-204.1, pp. 670-675. Sections dealing with forged signatures.

14. Fraudulent Conveyances, p. 371, *U.S. Supreme Court Digest,* Lawyers Edition No. 17, Court Rules, Constitution, The Lawyers Cooperative Publishing Company, etc., Rule 18(b), Joinder of Remedies.

> "Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, a plaintiff may state as claim for money and a claim to have set aside a conveyance fraudulent to his (as to

him) without first having obtained a judgment establishing the claim for money."

15. *Griffin, Eugene, et al., Petitioners v. Breckinridge, Lavon, et al.*, 403 U.S. 88, 29 L.Ed. 339-351, Civil Rights Decision of U.S. Supreme Court in 1971. 91 S.Ct. 1790, No. 144, Argued 13 and 14, 1971, Decided June 7, 1971. Summary: The action was based on 42 U.S.C. 1985(3), which authorizes the recovery of damages where two or more persons conspire or go in disguise on the highway or on the premises of another for the purposes of depriving any person or class of persons of the equal protection of the laws or of equal privileges and immunities under the laws.

16. Investment Securities, Adverse Claims No. 8-304, *Notice to Purchaser*, p. 739, U.C.C. Effect of delivery without endorsement. Right to compel endorsement, p. 749, No. 8-308. Effect of endorsement without delivery.

"An endorsement of a security whether special or in blank does not constitute a transfer until delivery of the security on which it appears or if the endorsement is on a separate document until delivery of both document and the security."

17. Investment Securities, Issue and Issuer, Anderson's *Uniform Commercial Code*, No. 3, p. 683, U.C.C. 8-201; Issuer, U.C.C. 8-202, pp. 683-690; U.C.C. Part No. 3 – Purchase – Rights acquired by purchaser, Adverse Claim, Title acquired by *bona fide* purchaser, pp. 726-727, U.C.C.

18. Liability in Damages under No. 8, U.S.C. No. 47, for conspiracy to deprive a person of his civil rights. 95 L.Ed. 1253.

19. Libel and Defamation, pp. 296-337, *U.S. Supreme Court Reports,* Lawyers Edition No. 29 L.Ed. 2d, U.S. 403 Law U.S. 5, 2d set (403) U.S. *George A. Rosebloom, Petitioner v. Metromedia, Inc.*, 403 U.S. 29, 29 L.Ed. 2d 296, 91 S. Ct. 1181, No. 66, Argued Dec. 7 and 8, 1970, Decided June 7, 1971. The District Court in the libel action, held that the Constitutional standard required by the First Amendment whereby recovery of damages for certain defamatory falsehoods was prohibited unless it was proved that it was uttered with a knowledge that it was false or not, was inapplicable unless the plaintiff was not a "public official" or a public figure and instructed in accordance with Pennsylvania libel laws.

20. Pleadings and Motions 9:11; Notice of Hearing and Motion Day. Rule 7(b) and Rule (11) provides for Motion and other papers. Moore's *Manual of Federal Practice and Procedure.* Moore-Vestal KF8820 A313, N64(1), on application to the Court for an order shall be by motion which unless made during a hearing or trial . . . in writing . . . shall set forth the relief or order . . . a motion is not a pleading . . . a motion . . . signed with intent to defeat the purpose of Rule (11) may be stricken as sham and false."

21. Rules of the Supreme Court: "If a pleading is not signed or is signed with intent to defeat the purpose of this rule (Rule 11) it amy be stricken as sham and false."

22. Securities, Scope and Suggestions Related to Lost, Stolen, Destroyed Securities. U.C.C. No. 8-405, p. 821, Lost, Stolen, Destroyed Securities, specifying when the owner is harried from asserting his claim thereon as owner, when the issuer must issue a replacement security and what consequences flow from the presentation . . . of the

original certificates by a third person. Shareholders Actions, pp. 991-1005.

23. Shareholders Actions, pp. 991-1005, Moore-Vestal, p. 540(7), *Special Damages.* Moore and Vestal in *Federal Practice* KF8840, M64. By Moore, James William, and Vestal, Allen D.; Vestal, D., Bender M., Albany, 1962.

24. *Tort,* Federal Tort Claims Act, pp. 762-767. Construction and Application of 28 U.S.C.S. No. 2675(a), as amended in 1966, and implementing regulations requiring presentation of claim to and denial of claim by a Federal Agency before the Court Action can be instituted against the United States. Federal Tort Claims, Cooperative Lawyers Publishing Co., Rochester, 1972.

25. Constitutional Law: The requirement of a three-judge panel at the level of the United States District Court.

26. Constitutional Law: Constitution of the United States of America Annotated, Senate Docuement No. 39, 88th Cong. Law U.S., p. 1000 – Right to a Speedy and Public Trial, Amendment 6 of the Constitution.

27. Crime Control Act of 1968.

28. Actionable Conspiracy, 16, Am. Jur. Conspiracy No. 50, 51, 53, 56 American Journal of Monopolies, Combination and Restraints of Trade, 1st Ed.

APPENDIX

SECTION I – COURT ORDERS

SECTION III – INDEX OF DOCKETS

SECTION IV – INDEX OF EXHIBITS OF IDENTIFICATION AND MISCELLANEOUS OWNERSHIP RECORDS

(No.13 7-17-73)

73-1523

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the thirtieth day of July, one thousand nine hundred and seventy-three.

Marian Virginia Dunton,

Plaintiff-Appellant,

v.

International Business Machines, and Frank T. Cary, President,

Defendant-Appellee.

It is hereby ordered that the motion made herein by counsel for the

~~appellant~~ appellee ~~petitioner~~ ~~respondent~~

by notice of motion dated June 29, 1973, to dismiss the appeal from the United States District Court for the Southern District of New York for lack of jurisdiction and to remand for further proceedings

be and it hereby is granted. ~~denied~~

It is further ordered that

July 30, 1973

Leonard P. Moore

James L. Oakes

Murray I. Gurfein, Circuit Judges

PHD SE 10/1/73 73-1383

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 10th day of October, one thousand nine hundred and seventy-three

---

Marian Virginia Burton,

Appellant,

v.

Libet, et al.,

Appellees.

A motion having been made herein by Appellant pro se for ~~a certificate of probable cause for leave to proceed in forma pauperis, for reexamination of the minutes of the testimony of the United States at the assessment of record and for~~ to vacate an order of dismissal for rehearing

Upon consideration thereof, it is

Ordered that said motion be and it hereby is respectfully referred to the panel which decided appellant's original application, to wit, Judges Irving R. Kaufman, Wilfred Feinberg and William H. Timbers (per WF) Circuit Judges

Clerk of Court

rtd 12
11/14/73
73-1823

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the sixteenth day of November, one thousand nine hundred and seventy-three.

Marian Virginia Baxter,

Appellant,

v.

Ishii, et al.,

Appellees.

A motion having been made herein by appellant pro se for a certificate of probable cause, for leave to proceed in forma pauperis, for transcription of the minutes at the expense of the United States, for the assignment of counsel and for rehearing

Upon consideration thereof, it is

Ordered that said motion be and it hereby is denied.

James L. Oakes, U.S.C.J.

Murray I. Gurfein, Circuit Judges
U.S.D.J.

Jim L. Gurfein

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Office of the Clerk
United States Court House
Foley Square
New York, N.Y. 10007

Date May 2, 1973

Marian V. Buxton
Sutton Plaza Apts.–301
1230 13th N.W.
Washington, D.C.

Title: MARIAN VIRGINIA BUXTON, Plaintiff

-v-

INTERNATIONAL BUSINESS MACHINES, et al.,
Defendants.

Docket Number: Pro se 72 Civ. 5228

Decision dated: April 30, 1973

Judge Metzner

Sir:

There is enclosed herewith, copy of decision filed and entered in the above-entitled proceeding.

Very truly yours,

THOMAS E. ANDREWS,
Clerk

by: /s/ Ronald Sulyma
Deputy Clerk

cc
Scott E. Wollaston, Esq.
c/o IBM Corp.
Old Orchard Road
Armonk, New York 10504

Pro Se 72 Civ. 5228

United States District Court
FOR THE
Southern District of New York

MARIAN VIRGINIA BUXTON,

Plaintiff,

-against-

INTERNATIONAL BUSINESS MACHINES and FRANK T. CARY, PRESIDENT, et al., Officers of IBM,

Defendants.

OPINION

Charles M. Metzner, D. J.

Dated: October 19, 1973

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -

MARIAN VIRGINIA BUXTON,

Plaintiff,

–against–

INTERNATIONAL BUSINESS MACHINES and FRANK T. CARY, PRESIDENT, et al., Officers of IBM,

Defendants.

PRO SE
72 Civ. 5228
No. 39946

- -

METZNER, D. J.:

Defendant now moves for summary judgment. Originally it had moved for a dismissal of the complaint and the plaintiff pro se had filed various motions in opposition thereto. The court referred the original motion and cross motions to Magistrate Raby on the stated grounds that "a review of the pending motions indicates that a great deal or clarification is necessary to understand the relief requested by the plaintiff."

The magistrate, at the court's suggestion, fixed a date for oral hearing which was attended only by counsel for defendant. On the following day plaintiff appeared and thus the magistrate did not have the opportunity to have both parties before him at the same time. He filed a lengthy report with the court in which he distilled from the varied charges in the complaint the possible claims that legally could be asserted by plaintiff. He directed defendant to file an answer to the claims that he felt were viable and then move for summary judgment. He denied all of the plaintiff's motions. The report is part of the file in this case and copies were mailed to the parties.

The court entered the appropriate order on the report and directed the serving of an answer. The answer was filed along with defendant's motion papers seeking summary judgment. At the outset, plaintiff claims that defendant is in default in never having served the papers. It is obvious she received the papers since she has submitted papers in opposition to the motion for summary judgment. What she is claiming is an alleged lateness in service.

The documentary proof submitted by defendant, including the receipt issued by the Post Office for certified mail and the envelope returned as unclaimed show that the first attempt at service failed through no fault of defendant. Obviously, the second mailing was successful.

I come now to the merits of the controversy. There is no dispute that plaintiff and James M. Buxton were married. Whether they are presently divorced or legally separated is of no moment. Defendant has submitted an affidavit from Mr. Buxton indicating that he is clearly alive and is living in Texas, having retired from IBM. Pursuant to the IBM retirement plan, he receives monthly checks in the amount of $670.64. Defendant has submitted an affidavit of its employee attaching copies of monthly pension checks sent to Mr. Buxton for the months of January, February, March and April 1973. These checks were sent to a bank in Florida where they were deposited by the bank to Mr. Buxton's account. Incidentally, attached to Mr. Buxton's affidavit is a photostatic copy of a handwritten letter which Mr. Buxton sent to the plaintiff. That letter states that it has come to Mr. Buxton's attention that the plaintiff has heard rumors of his death. The purpose of the letter was to inform her that the contrary was the fact.

Plaintiff counters this proof with the simple statement that "In view of the fact that medical informants, the Bishop of the Episcopal Church, and the Army Medical has informed plaintiff, in addition to the police of Lt. Commander James Morgan Buxton's death." The names of the persons who allegedly gave plaintiff this information are not furnished, nor their whereabouts. No certificate of death is furnished. No date of death is even approximated, nor a hint of the place of death. Finally, there is no denial of receipt of the letter from her husband dated April 22, 1972.

On this state of the record the court must find that Mr. Buxton is alive and receiving his pension checks from the defendant as provided for by the latter's retirement plan. The plaintiff is not entitled to any benefits under the retirement plan until the death of Mr. Buxton.

Plaintiff further claims that she was the joint owner with her husband of IBM stock and therefore has a proprietary interest because of survivorship rights. Since Mr. Buxton is still alive, she has no present claim against IBM for such stock, assuming that it in fact exists.

It appears that the plaintiff was the joint owner with her husband of 90 shares of IBM stock. This stock was transferred to the plaintiff individually on May 7, 1969 and subsequently sold by her. An additional 15 shares were held in plaintiff's name and also sold by her. The sales of this stock are evidenced by the endorsements on the back of the certificates which guarantee her signature. She admits that the guarantor is the brokerage firm with which she does business. The claim for tortious withholding of stock by the defendant cannot be sustained on this record.

Finally, the plaintiff in her answering papers seeks "an enjoinder against further perjuries, efforts to swindle and defraud, to aid and abet in injuring, libeling, and conspiring to ruin the plaintiff's professional opportunities, and to appropriate her property, as well as to avoid payment of the pension, and enjoinder for defendant to pay the claim." These charges were contained in the complaint and aside from the two discussed above, they do not sustain any actionable complaints on the record.

The motion for summary judgment dismissing the complaint is granted.

So ordered.

Dated: New York, N.Y.
October 19, 1973

/s/ Charles M. Metzner
U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Office of the Clerk
United States Court House
Foley Square
New York, N.Y. 10007

Date October 23, 1973

Marian Virginia Buxton
P.O. Box 311
Carneilan Bay, California
95711

Title: BUXTON –v– INTL. BUSINESS MACHINES, et al.

Docket Number: Pro Se 72 Civ. 5228

Decision dated: October 19, 1973

Judge METZNER

Sir:

There is enclosed herewith, copy of decision filed and entered in the above-entitled proceeding.

Very truly yours,

RAYMOND F. BURGHARDT
Clerk

by: Nina Butingaro
Deputy Pro Se Clerk

cc:
Scott E. Wollaston, Esq.
Old Orchard Road
Armonk, N.Y.

* * * CIVIL DOCKET
UNITED STATES DISTRICT COURT

5/11/73
JUDGE METZNER

Jury demand date

72 Civ. 5228

Title of Case

MARIAN VIRGINIA BUXTON

vs.

INTERNATIONAL BUSINESS MACHINES AND
F.T. CARY, PRESIDENT et-al OFFICER OF I.B.M.

Attorneys

For plaintiff:

MARIAN VIRGINIA BUXTON
SUTTON PLAZA APTS., APT. 301
1230 13th St. N.W.
Washington, D.C.

For defendant:

Scott E. Wollaston, Esq.
Old Orchard Road
Armonk, N.Y. 10504

Statistical Record	Costs	Date	Name or Receipt No.	Rec.	Disb.
5 mailed X	Clerk	12/11/72	Fe V. Gaston	15	
		12/12/72	U. S. T(illegible)		15-

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Office of the Clerk
United States Courthouse
Foley Square
New York, N.Y. 10007

Date December 10, 1973

MARIAN VIRGINIA BUXTON
P.O. BOX 311
CARNELIAN BAY, CALIFORNIA 95711

Title: MARIAN VIRGININA BUXTON
-v-
INTERNATIONAL BUSINESS MACHINES CORP ET AL

Docket Number: 72 CIV. 5228

Decision dated: DECEMBER 8, 1973

Judge METZNER

Sir:

There is enclosed herewith, copy of decision filed and entered in the above-entitled proceeding.

Very truly yours,

RAYMOND F. BURGHARDT
Clerk

by: CHARLES A. BLANDO
Deputy Pro Se Clerk

VIRGINIA BUXTON VS. INTERNATL. BUSINESS MACHINES

CIVIL DOCKET METZNER

Date	Findings-Proceedings
May 30-73	Filed Motion re: Award Claim and Damages, etc.
May 31-73	Filed Notice of change of address of Marian Virginia Buxton to Mrs. James Morgan Buxton, P.O. Box 311 Carnelian Bay, Calif. 95711.
May 30-73	Filed Certified Record on Appeal to the U.S.C.A.
Jun 6, 83	Filed Defts Notice of Motion for Summary Judgment before Judge Metzner, Room 2201, 6/15/73, 10:00 A.M., Memorandum of Authority in support of Deft's Motion for Summary Judgment&Affdvt of David W. Pitou.
Jun 6, 73	Filed Defts Notice of Motion for Leave to file amended answer pursuant to Rule 15.
Jun. 20-73	Filed deft's memorandum in opposition to pltff's motion for default judgment.
June. 20-73	Filed letter dated 6-19-73 to Mrs. M.V. Buxton Re: unclaimed, mail.
Jun. 20-73	Filed MEMO-END. on motion dtd 5-30-73. This motion is denied. See affdvt of service submitted by deft. METZNER, J. (mn)
Jun. 20-73	Filed MEMO-END. on motion dtd 6-6-73. This motion for leave to amend the answer is granted. METZNER, J. (mn)
July 13-73	Filed pltff's motice of motion for enjoinder re: exhibits & ct. testimony
July 13-73	Filed motion to add testimony & exhibits in answer to the amended answer of deft.

7-25-73	Filed pltffs. response to motion for summary judgment served in default.
Aug. 21, 73	Filed True Copy of U.S.C.A. 2nd Circuit dismissing appeal for lack of jurisdiction and to remand for further proceedings.
Oct-19-73	Filed OPINION No. 39946– The defendants Motion for Summary Judgment is granted. So ordered. – Metzner, J. (m/n to pltff by pro-se clerk) m/n
Oct. 26-73	Filed Judgment that defendants have summary judgment against the plaintiff, Marian Virginia Buxton, dismissing the complaint. –Clerk ent. 10-29-73)
-19-73	Filed Affidavit of Marie J. Rizzo dated 7-3-73
-19-73	Filed Affidavit of Scott E. Wollaston Esq. dated 7-27-73
Nov. 11/73	Filed Supplemental record on appeal certified and transmitted to U.S.C.A. 11/1/73
Dec. 6-73	Filed by pro-se plaintiffs: affdvt. of service, authorities cited, legal issues, statement of the case, etc. (all under one back).
Dec. 10-73	

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By: E.A. Beckin /s/
Deputy Clerk

December 8, 1973 Motion for reargument
granted and upon reargument
the original determination as
adhered to So ordered

Charles H. Tuttle
U.S.D.J.

VIRGINIA BUXTON VS. INTERNATL. BUSINESS MACHINES

CIVIL DOCKET — JUDGE METZNER

PRO SE — 72 CIV. 522

Date	Findings-Proceedings
Dec 11-72	Filed Complaint. Issued Summons.
Dec 26-72	Filed defts Notice of Motion for an Order dismissing the complaint purs to Rule 12 (b), on the grounds that said complaint fails to state a claim against, deft.
Dec 26-72	Filed defts memorandum in support of defts motion to dismiss the complaint.
Dec 19-72	Filed summons with marshals return. (SERVED: 12-19-72) Frank T. Carey or any office
Jan 17-73	Filed Amended brief by pltff in response to defts notice of motion to dismiss the complaint.
Jan 23-73	Filed Notice of Motion for an order for temporary relief and motion for Admission to the bar of claim for damages on Conspiracy and Defamation charges by pltff and aa id pltff in accordance to Federal Practice and Procedure, Rule 7 (b) pleadings and motions notifies deft the pltff will present said motions rtble Feb 6th, 1973.
Mar. 5-73	Filed Plea for Emergency Relief against enslavement, conspiracy to defraud, etc.
Mar. 7-73	Filed Order. The matters are referred to Magistrate Raby who shall notify the parties to appear before him as soon as practicable so that he might hear oral argument and report to this court his recommendations as to the disposition of the

pending motions. So ordered. Metzner, J. (mailed notice). (Also in 73 Civil 4).

Apr 23-73 Filed pltff's motion for demurrer on grounds of failure to comply with statute of frauds on the part of Mag. Raby.

Apr 30-73 Filed MEMORANDUM & ORDER on motion dtd 12-26-73. Ordered that the defts' motion is denied, without prejudice to defts' right to move for summary judgment, etc., that deft shall serve and file answer to complaint not later than ten days from date of entry of this order and that the plftff's cross motions filed respectively on 1-17-73, 1-23-73 and 3-30-73 are denied in all respects. METZNER, J. (mn)

May 10, 73 Filed Defts ANSWER to Complaint.

May 11, 73 Filed Pltff's Notice of Appeal (Mailed Coy Copy)

March 30, 73 Filed Plea for emergency relief against enslavement etc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Office of the Clerk
United States Courthouse,
Foley Square
New York, N.Y. 10007

December 6, 1973

Mrs. James M. Buxton
Apt.428 Watergate Apartments
#6 Captain Drive
Emeryville, Calif. 94608

Dear Sir:

Receipt is acknowledged of your

brief

Please be advised that we have this day submitted the above to the Court for its consideration. You will be informed as to any action taken thereon.

Very truly yours,

RAYMOND F. BURGHARDT
Clerk

By: Edward M. Chikofsky
Deputy Pro Se Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

. x

MARIAN VIRGINIA BUXTON

Vs CASE NO. 72 Civ 5228

I.B.M. et al CMM

. x

EXTRACT OF DOCKET ENTRIES

May 30, 73	Filed Motion re: Award Claim & Damages, etc.
May 31, 73	Filed Notice of change of address of Marian V. Buxton, to Mrs. James Morgan Buxton, PO Bx 311
June 6, 73	Filed Notice of Motion for summary Judgment (by the deft)
June 20, 73	Filed Deft's memorandum in opposition to pltff's motion for Defaut Judgement
June 20, 73	Filed Letter dated 6-19-73 to Mrs. M.V. Buxton Re: Unclaimed mail
June 20, 73	Filed Memo-End on motion dated 5-30-73. This motion is denied see affdvt of service submitted by deft. Metzner, J.
June 20, 73	Filed MEMO-END on motion dated 6-6-73. This motion for leave to amend the answer is granted. Metzner, J.
July 13, 73	Filed Enjoiner
Aug 21, 73	Filed True Copy of USCA Order dismissing appeal
8-19-73	Filed Affidavt of Marie J. Rizzo Dated 7-3-73
8-19-73	Filed Affidavit of Scott E. Wollaston Esq. dated 7-27-73
8-19-73	Filed Opinion No. 39946

A TRUE COPY, RAYMOND F. BURGHARDT
Clerk

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Marian Virginia Buxton,

Plaintiff

-vs-

International Business Machines
et al

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CASE NO. 72 Civ 5228 CHN

INDEX TO THE RECORD ON APPEAL

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Notice of motion by defendant to dismiss complaint and Memo Endorsed by Judge Metzner.	2
Summons with Marshal's return	3
Plaintiff's amended brief.	4
Plaintiff's motion for an order for temporary relief, etc.	5
Plea for emergency relief, etc. by Plaintiff.	6
Order of reference to Magistrate by Judge Metzner.	7
Plea for emergency relief,etc. of plaintiff	8
Plaintiff's motion for demurrer etc.	9
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UNITED ... OF APPEALS
FOR T... CIRCUIT

U.S.C.A. INDEX NUMBER
73-1823

MA ... BUXTON,
Pltff.

Vs

INTERNATIONAL BUSINESS
MACHINES CORP. et al

UNITED STATE DISTRICT ...
SOUTHERN DISTRICT OF ...

CASE NUMBER 72 Civ 3228
CMH

INDEX TO THE SUPPLEMENTAL RECORD ON APPEAL

DOCUMENTS

C

Certified extract of docket entries
Pltff's

MAY 30,73	Filed Motion for an order awarding claim & Damages As Set Out Below	13
[illegible]-73	This motion is denied. See affidavit of service submitted by defendant. So Ordered Charles H. Metzner, Judge. (Memo-end on above motion)	C
May 31, 73	Filed Notice of change of Address of Pltff. ... Marian Virginia Buxton, Gen. Delivery, Main Post Office at 34 St. NYC 10001 to Marian V. Buxton, Mrs. James Morgan Buxton, P.O. Box 311 Carnelian Bay, Calif. 95711. from	14
6-6-73	Filed Notice of motion for summary judgment by attys for deft	15
6-20-73	Memorandum in opposition to Pltff's motion for default, Judgment	16
6-20-73	Letter dated 6-19, 73 from Scott E. Wollaston to Mrs Buxton Re: unclaimed mail	17
6-6-73	Notice of Motion for leave to file amended answer pursuant to rule 15 sumitted by atty for deft IBM/memo end. by Judge Metzner granting motion.	18
7-25-73	Response to Motion for summary judgment served in default submitted by the plaintiff.	19
7-13-73	Enjoiner filed by atty for IBM	20
8-21-73	Judgment from USCA.	21
8-19-73	Affidavit of Marie J. Riazo dated 7-3-73	22
8-19-73	Affiavit of Scott E. Wollaston Esq dated 7-27-73 #39946	23
10-19-73	Opinion of Judge Metzner	24

FILED [illegible]

A. J. GINOCCHIO
RING, TURNER & RING
Attorneys at Law
1937 North Broadway
Post Office Box 334
Walnut Creek, California 94597
Telephone: (415) 935-0550

Attorneys for Respondent

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF PLACER

In re the marriage of

Petitioner: JAMES M. BUXTON

and

Respondent: VIRGINIA D. BUXTON

No. 32790

ORDER RE MODIFICATION OF FINAL DECREE OF LEGAL SEPARATION

The Order to Show Cause re modification of the Final Decree of Legal Separation came on regularly to be heard before the above-entitled Court on the 17th day of April, 1970, before the Honorable Leland Propp, respondent appearing personally and by her attorney A. J. GINOCCHIO and petitioner appearing by his attorney ROBERT FUGAZI.

Upon proof of legal notice of the hearing and service of the same having been submitted, and upon hearing and receiving oral and documentary evidence in the matter,

NOW, THEREFORE, IT IS HEREBY ORDERED:

(1) The decree of legal separation herein shall be and is hereby modified as follows: Petitioner shall pay to respondent for her legal support the sum of $225.00 per month to commence forthwith and to continue for the balance of the term set forth in said decree of legal separation.

costs incurred in this action, payable forthwith.

DONE IN OPEN COURT this 17th day of April, 1970; presented and signed this 1st day of May, 1970.

LEIAND PROFF
Judge of the Superior Court

FILED Jul 3 1968
MAURINE I. DOSBA
County Clerk of Placer County
By /s/ Mary Anne xxxx
Deputy

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER

THE PEOPLE for the best interest and protection	)	
	)	NO. 1903
of	)	
VIRGINIA D. BUXTON as a mentally	)	

JUDGMENT
and
ORDER FOR RELEASE

The jury in this case having returned a verdict that VIRGINIA D. BUXTON is not a mentally ill person

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that VIRGINIA D. BUXTON is not a mentally ill person and it is

FURTHER ORDERED, ADJUDGED AND DECREED that VIRGINIA D. BUXTON be released from Dewitt State Hospital at Auburn, California forthwith.

Dated: July 3, 1968

/s/ _____
Judge of the Superior Court
Pro Tem

OPTIONAL FORM 8

INQUIRY AS TO AVAILABILITY

Return this form to us

U. S. NAVAL SHIP MISSILE SYSTEMS
[illegible]
PORT HUENEME, CALIFORNIA

Marian V. Sutton
5617 Victoria Road
Carnelian Bay, California 95711

DATE	CLASS CODE
5/14/71	79-11004
POSITION	SALARY
Guidance Counselor	$10,470 pa
LOCATION: NSMSES, Port Hueneme, Calif.	

TYPE OF APPOINTMENT
- ☐ CAREER-CONDITIONAL
- ☐ CAREER
- ☒ TEMPORARY FOR 90 Days

We offer to consider you among others for the employment described. Please fill out the "Availability Statement" below, indicating whether you would accept this position if offered, and return the entire sheet to this office. Appointment would be subject to the Civil Service requirements described on the back of this letter. Whether you are available or not, your reply to this inquiry must be received by this office not later than as soon as possible. If your reply is not received by this date, you cannot be considered.

A ☐ The Civil Service Commission has terminated your original application for review.

B ☐ The Civil Service Commission was unable to furnish your original application for review at this time, and is being considered elsewhere. You will find an application form attached to this inquiry. Please complete the application and return it to this office promptly along with your reply to this inquiry if you wish to be considered for appointment.

Failure to reply to this inquiry will result in the removal of your name from the list of eligibles. THIS IS A LETTER OF INQUIRY AND NOT AN OFFER OF EMPLOYMENT. If selected, you will be notified and given further instructions.

Other information: If you will be available and interested in the position mentioned above, please fill out the enclosed SF-171 and return as soon as possible.

Signature, title

R. A. RIENKE, Head

(DO NOT DETACH)

AVAILABILITY STATEMENT

Personnel Support Division

[illegible]

(Check one) (Each one)

☐ I am available and wish to be considered for the position described above. I can report for duty within 2 days does other arrangements. I am now employed by [illegible] played and receive employment.

☐ I do not wish to be considered for the position described above. I am giving my reasons on the other side of this form.

☐ I request that my name be removed from the active list of eligibles until I request that I am available for appointment. ☐ I consider myself available for other appointments, subject to the following conditions:

The position must pay at least $ (G.S.) per yr. (year, month, day, or hour).

I am willing to work ☐ in Washington, D.C. ☐ [illegible] in the U.S. ☐ Outside the U.S. [illegible] on U.S. installations.

I will accept any assignment or the following locations only:

I will accept short term appointments for ☐ 3 mos. or less, ☐ 3 to 6 months, ☐ 6 to 12 months.

May 17, 1971

(Date)

(Applicant's signature)

(SEE REVERSE SIDE)

UNITED STATES CIVIL SERVICE COMMISSION

NOTICE OF RATING

APPLICANT MUST FILL IN ALL BLANKS DOWN TO HEAVY BLACK LINE

EXACT TITLE OF EXAMINATION

[illegible]

DATE OF EXAMINATION

NAME [illegible]

ADDRESS [illegible]

CITY, STATE AND ZIP CODE [illegible]

This is not a notice of appointment. It is a record of your rating. It is important that you keep it. It is noted that your application was not rated for any position with a lower entrance salary than that which you indicated thereon.

Your Rating is — ELIGIBLE

☐ This examination is not rated on a numerical basis

☒ Your numerical rating is:

[illegible] 90

Your Rating is — INELIGIBLE for the reasons checked below:

☐ The lowest acceptable salary indicated on your application is higher than the salary shown on our announcement.

☐ You did not pass the written test. All competitors must attain an earned rating of 70 without regard to veteran preference. When an applicant's paper falls below the passing mark it is not scored further. Ineligibles do not receive a numerical grade.

☐ Your application does not show that you meet the minimum requirements as to experience (or education) which were specified in the examination announcement.

☐ Your eligibility is suspended pending your furnishing the Commission proof of correction of physical condition, as shown on the attached notice.

☐ Failed to reply to official correspondence.

☐ [illegible]

IF THERE IS A CHECK BELOW IT INDICATES THE AMOUNT OF VETERAN PREFERENCE CREDIT INCLUDED IN YOUR RATING

☐ [illegible] ☐ 10 POINTS

If you have received an eligible rating, be sure to read the important message on the back of this form.

BOARD OF U. S. CIVIL SERVICE EXAMINERS FOR [illegible]

[illegible]

(Issuing Office and Date of Notice)

CSC FORM [illegible]
OCTOBER 1942

THE STATE BOARD OF EDUCATION ACTED IN ACCORDANCE
WITH THE RECOMMENDATION OF

Jordan Boyden Dunton

1-15-72 EXPIRES 6-30-77 271 37

49

STATE OF CALIFORNIA

THE STATE BOARD OF EDUCATION ACTING IN ACCORDANCE WITH THE AUTHORITY VESTED IN IT AWARDS TO

Marian Dryden Buxton

STANDARD DESIGNATED SERVICES CREDENTIAL

SUBJECT TO THE FOLLOWING STIPULATIONS

ISSUED: 1-19-72 EXPIRES: 6-30-77

SSN No. 131-12-2743 RENEWAL REQUIREMENTS: 37

SUBJECT(S) 8*** AUTHORIZATION(S) 271

MAJOR(S) **** MINOR(S) ****

/s/ Henry T. Gunderson
President, State Board of Education

s/
CHAIRMAN, COMMISSION FOR TEACHER PREPARATION AND LICENSING

s/

s/

For an explanation of renewal requirements, subject, and authorization codes, see Booklet No. 825.

UNITED STATES CIVIL SERVICE COMMISSION

NOTICE OF RATING

APPLICANT MUST FILL IN ALL ITEMS DOWN TO HEAVY BLACK LINE

EXACT TITLE OF EXAMINATION

[illegible]

DATE OF EXAMINATION

NAME [illegible]

ADDRESS [illegible]

CITY, STATE AND ZIP CODE [illegible], California 95711

This is not a notice of appointment. It is a record of your rating. It is important that you keep it. It is noted that your application was not rated for any position with a lower entrance salary than that which you indicated thereon.

Your Rating is — ELIGIBLE

- ☒ **This examination is not rated on a numerical basis**
- ☐ **Your numerical rating is:**

[illegible]

Your Rating is — INELIGIBLE for the reasons checked below:

- ☐ The lowest acceptable salary indicated on your application is higher than the salary shown on our announcement.
- ☐ You did not pass the written test. All competitors must attain an earned rating of 70 without regard to veteran preference. When an applicant's paper falls below the passing mark it is not scored further. Such cases do not receive a numerical grade.
- ☐ Your application does not show that you meet the minimum requirements as to experience (or education) which were specified in the examination announcement.
- ☐ Your eligibility is suspended pending your furnishing the Commission proof of correction of physical condition, as shown on the attached notice.
- ☐ Failed to reply to official correspondence.

☐ [illegible]

A CHECK IN A CHECK BOX AT RIGHT INDICATES THE AMOUNT OF VETERAN PREFERENCE CREDIT INCLUDED IN YOUR RATING

☐ [illegible] ☐ 10 POINTS

If you have received an eligible rating, be sure to read the important message on the back of this form.

[illegible]
U. S. CIVIL SERVICE EXAMINING OFFICE
WASHINGTON, D. C.
WASHINGTON, D. C. 20415

[illegible]

CSC FORM 452 (12)
Civil Service Rule

UNITED STATES CIVIL SERVICE COMMISSION
NOTICE OF RATING

APPLICANT MUST FILL IN ALL BLANKS BELOW TO INSURE QUICK ACTION

EXACT TITLE OF EXAMINATION	DATE OF EXAMINATION
PSYCHOLOGIST	

NAME: Mrs. Virginia D. Buxton
ADDRESS: 5617 Victoria Rd.
CITY, STATE AND ZIP CODE: Napoleon Bay, Calif. 92711

This is not a notice of appointment. It is notice of your rating. It is important that you keep it. It is noted that your application was not rated for any position with a lower entrance salary than that which was indicated thereon.

Your Rating is — ELIGIBLE

☐ This examination is not rated on a numerical basis
☐ Your numerical rating is:

Clinical Psychologist	GS-9	89
	GS-11	90
	GS-12	85

Your Rating is — INELIGIBLE for the reason checked below.

☐ The lowest acceptable salary indicated on your application is higher than the salary shown in the announcement.
☐ You did not pass the written test. All competitors must attain an earned rating of 70 without regard to veteran preference. When an applicant's paper falls below the passing mark it is not scored further. Ineligibles do not receive a numerical grade.
☐ Your application does not show that you meet the minimum requirements as to experience for education which were specified in the examination announcement.
☐ Your eligibility is suspended pending your furnishing the Commission proof of correction of physical condition, as shown on the attached notice.
☐ Failed to reply to official correspondence.
☐

IF THERE IS A CHECK BELOW IT INDICATES THE METHOD OF VETERAN PREFERENCE CREDIT INCLUDED IN YOUR RATING

☐ [illegible] ☐ [illegible]

If you have received an eligible rating, be sure to read the important notice on the back of this form

BY [illegible]
U. S. CIVIL SERVICE COMMISSION
WASHINGTON, D. C.
[illegible]
Passing Grade on Each Part of Test

INTERAGENCY BOARD OF U. S. CIVIL SERVICE EXAMINERS
FOR [illegible] AND THE PACIFIC AREA
[illegible]
HONOLULU, [illegible] 96813

DATE: JUL 6 1970

Marion Virginia Buxton
5617 Victoria Road
Carmelian Bay, California 95711

TITLE OF EXAMINATION	GRADES	RATINGS
[illegible]	9-9,11,12	ELIGIBLE

YOUR RATING, WHICH IS SHOWN ABOVE, ENTITLES YOU TO BE CONSIDERED FOR CAREER-CONDITIONAL OR TEMPORARY APPOINTMENT WHEN YOUR NAME IS REACHED, IF YOU ARE AVAILABLE FOR APPOINTMENT AT THAT TIME.

AVAILABILITY

IF YOU ARE NOW AVAILABLE FOR APPOINTMENT FROM THIS LIST, PLEASE COMPLETE THE ENCLOSED AVAILABILITY CARD FORM(S) FW,1025 AND RETURN THE COMPLETED TO THIS OFFICE. DO NOT RETURN THE ENCLOSED FORM(S) UNLESS YOU ARE ACTUALLY AVAILABLE FOR APPOINTMENT. IF YOU DO NOT RETURN THE COMPLETED FORM(S) WITHIN 10 DAYS FROM THE DATE OF THIS LETTER, WE WILL ASSUME YOU ARE NOT CURRENTLY AVAILABLE FOR CONSIDERATION AND WE WILL SUSPEND YOUR NAME FROM THE ACTIVE LIST. HOWEVER, YOU MAY RETURN THE CARD FORM(S) AT ANY TIME WHEN YOU ARE ACTUALLY AVAILABLE AND WE WILL RESTORE YOU NAME TO THE LIST, IF THE LIST HAS NOT BEEN TERMINATED.

TIME OF ELIGIBILITY

UNLESS SPECIFIED OTHERWISE IN THE EXAMINATION ANNOUNCEMENT, YOUR ELIGIBILITY ON THE LIST OF ELIGIBLES IS LIMITED TO THE LENGTH OF TIME THE LIST REMAINS ACTIVE, BUT NO LONGER THAN 12 MONTHS FROM THE DATE SHOWN AS YOUR NOTICE OF RATING. YOU MAY REQUEST AN EXTENSION OF YOUR ELIGIBILITY AFTER 10 MONTHS FROM THE DATE OF THE NOTICE OF RATING BY SUBMITTING AN UP-TO-DATE SF 57 APPLICATION ON YOUR AVAILABILITY AND YOUR EXPERIENCE ON ACTIVITIES BEING FILLED FROM INITIAL APPLICATION, USING SF'S 1749, 58, OR BY LETTER. STATEMENTS RECEIVED PRIOR TO THE 10TH MONTH PERIOD WILL NOT BE ACCEPTED UNLESS YOU ARE NOW MEETING FOR A HIGHER LEVEL AND THE EXAMINATION IS STILL OPEN. INELIGIBLES AND FAILURES TO RATING TWICE. RECORDS OF TO DATE EITHER THE PRESCRIBED PERIOD WILL BE SCRAPPED AND THE REGISTER.

EXCEPTIONS: NOTE—PLEASE REFER TO THE TERM OF ELIGIBILITY GIVEN ON REVERSE OF YOUR NOTICE OF RATING.

TEMPORARY EMPLOYMENT

IF YOU ACCEPT TEMPORARY EMPLOYMENT, YOU NAME REMAINS ON THE LIST FOR PERMANENT EMPLOYMENT. IF WE CERTIFY YOU FOR TEMPORARY APPOINTMENT FROM THE REGISTER AND YOU ACCEPT SUCH APPOINTMENT, WE WILL NOT AGAIN CERTIFY YOUR NAME FOR TEMPORARY JOBS UNTIL YOU TELL US THAT YOUR TEMPORARY APPOINTMENT HAS ENDED OR IS ABOUT TO END AND THAT YOU ARE AVAILABLE FOR FURTHER TEMPORARY EMPLOYMENT.

PLEASE READ INSTRUCTIONS ON THE OTHER SIDE ON HOW TO FILL OUT THE AVAILABILITY CARD.

Dean Bollman

EXECUTIVE OFFICER

ENCLOSURE: FW,1025

FW-322
REV.3/62

LOUIS E. ARNAUD, M.C.
1181 Boulevard Way
Walnut Creek, California 94595
Phone 934-7691

March 13, 1973

To Whom It May Concern:

Re: Mrs. Virginia Buxton

Mrs. Buxton has asked this office for a character reference, which we can give unreservidly. This lady is a very pleasant well educated individual.

Any further questions in regard to this lady, please feel free to call this office.

Yours truly,

s/ L. E. Arnaud, M.D.
L. E. Arnaud, M.D.

LEA: wb

I have known Virginia Buxton for over 30 years.

She has been a very kind person – of exemplary character.

/s/

163 No. 78

MARRIAGES

Date April 20, 1963 Place St. Stephen's Episcopal Church, Berkeley

GROOM

James Morgan Burton

BACHELOR OR WIDOWER?

Widower

BRIDE

Virginia Brayden Hopper

MAIDEN OR WIDOW?

Divorced

Groom: Age 60 Residence 6054 Fairlawn Dr. Oakland

Parents: Richard E. Burton, Sarah Morgan

Bride: Age 49 Residence 2090 [illegible] Berkeley

Parents: [illegible]

SIGNATURE OF GROOM:

SIGNATURE OF BRIDE:

SIGNATURES OF WITNESSES

We, who have subscribed our names below, were Witnesses of the marriage of the above named parties at the place and time stated.

Arlene Daughters

SIGNATURE OF OFFICIATING MINISTER:

M. Brian Callison

55

NAVY DEPARTMENT
FIELD BRANCH
BUREAU OF SUPPLIES AND ACCOUNTS
CLEVELAND 15, OHIO

In reply address not the signer of the letter, but the Navy Department, Field Branch, Bureau of Supplies and Accounts, Cleveland 15, Ohio, and Refer to No.

FB/P15(25)(P)

From: Chief of Field Branch
To: BUXTON, James M., Lieut., SOS), USNR, 336781

SUBJ: American Campaign Ribbon and World War II Victory Ribbon, Authority to wear

Refs: (a) ALNAV 351-45
(b) ALNAV 352-45

1. It has been determined in accordance with references, that you are eligible for subject medals. Your are hereby authorized to wear the respective ribbons.

F. E. McMILLEN

(Illegible)
By Authority /s/

CC: ChBuPers
Jacket

The President of the United States of America.

To all who shall see these presents, greeting:

Know Ye, That reposing special trust and confidence in the Patriotism, Valor, Fidelity and Abilities of JAMES NORMAN BUXTON I do appoint him A LIEUTENANT COMMANDER IN THE SUPPLY CORPS in the Naval Reserve of the United States Navy to rank from the day of . He is therefore carefully and diligently to discharge the duties of such office by doing and performing all manner of things thereunto belonging.

And I do strictly charge and require all Officers, Seamen and Marines under his command to be obedient to his orders. And he is to observe and follow such orders and directions from time to time as he shall receive from me, or the future President of the United States of America, or his Superior Officers set over him, according to the Rules and Discipline of the Navy.

This commission to continue in force during the pleasure of the President of the United States for the time being.

Given at the City of Washington this ELEVENTH day of JULY in the year of our Lord One Thousand Nine Hundred and FORTY-NINE and of the Independence of the United States of America the One Hundred and SEVENTY-FOURTH.

By the President:

Frances P. Matthews
Secretary of the Navy

420850

Relative Precedence from 1 February 1946

RING, TURNER & RING
ATTORNEYS AT LAW
1629 NORTH BROADWAY
WALNUT CREEK, CALIFORNIA 94597
AREA CODE 415
TELEPHONE 935-9550

February 28, 1972

COPY

TO WHOM IT MAY CONCERN:

Please be advised that VIRGINIA D. BUXTON has never been involved in any divorce proceeding and that the only matter ever pending against or by her was for separate maintenance, a decree for which was entered on April 3, 1969. Mr. James D. Buxton and Mrs. Virginia D. Buxton are still legally married and no divorce proceeding is pending.

Very truly yours,

RING, TURNER & RING

A. J. GINOCCHIO

AJG/jl
cc

IBM RETIREMENT PLAN WORKSHEET
PAY PLAN

Name JAMES M BUXTON
SS # 481-52-7592 Loc. HONOLULU Div. 13
Home Address 32 S KALAMOO AVE
KAILUA HAWAII
Clock Address
Soc. Sec. # 481-18-7592 P/N 22115
Salary $1750 - mo. Position

	Month	Day	Year
Date of Birth	11	03	07
Retirement Date	05	01	66
Date Employed	09	07	37
Length of Service	28	Yrs.	X Mos.

Retirement Insurance $ 12 Years Wages
$ 12000 Life Insurance

1. Early Retirement Election:
19 Months Early - 47% Reduction
Retirement Income $ 769.77
Less 47% of $ 769.77 - 36.23
Monthly Early Retirement Income $ 726.54

2. Joint and Survivor Election: 50%
Joint Annuitant:
Sex F
Date of Birth 11-14-13
Age to nearest year 53
J & S Adjustment % 75.7
Retirement Income (Before Adj.) $ 726.54
J & S Adjustment % x 75.7
Monthly J & S Retirement Income $ 549.99

RETIREMENT INCOME COMPUTATION

A. Service and Earnings Formula

Year	Total Earnings	Earnings To $4,800	Earnings Over $4,800
1953	$		
1954			
1955			
Average	$	$	$
Service Prior to 1/1/56		X	X
		$	$
1956	$		
1957			
1958			
1959			
1960			
1961			
1962			
1963			
1964			
1965	31000.00	4800.00	26200.00
1966	7000.00	4800.00	2200.00
1967			
1968			
Total Earnings		$ 9600.00	$ 28400.00
		X .60%	X .025
			$ 710.00
Annual Retirement Income		$ 5760.00	$ 710.00
Monthly Retirement Income - Service and Earnings Formula			$ 769.77

B. Service Formula $4.50
X 35 Years
Monthly Retirement Income - Service Formula 12.00 $ 157.50

SOURCE OF RETIREMENT INCOME

	IBM Trust Fund	Insurance Company	Total Income
Normal Retirement Income	$	$	$
J & S Retirement Income	$39.73	10.26	549.99
Early Retirement Income			
Level Retirement Income To			
For Life			

Remarks: Earnings credited for IBM Retirement Plan purposes through end of the year marked by asterisk.

Completed By:
Checked By:
Date: 4-29-66

NRO 12-01-59

Cable Address — BANKAMERICA

Bank of America
NATIONAL TRUST ASSOCIATION

TRUST DEPARTMENT
OAKLAND DISTRICT TRUST OFFICE

1300 BROADWAY, OAKLAND 12, CALIFORNIA

December 1, 1964

Mr. and Mrs. James D. Burton
3723 Rose Court
Lafayette, California

AN-1475-O

Dear Mr. and Mrs. Burton:

As requested by yourself and the I.B.M. Corporation, your property at 3723 Rose Court, Lafayette, California has been appraised to determine the market value.

The fair market value of the property is $52,650.00.

Very truly yours,

L. G. Ferrero
Property Management

LGF:gmo
cc: MONSON IBM

Recorded at the request of 62868

Return to:

James M. Buxton
3[illegible] Rose Court
Lafayette, California

245-(3)(i)-(2)

BOOK 4451 PAGE 573

RECORDED AT REQUEST OF
WESTERN TITLE GUARANTY COMPANY
CONTRA COSTA COUNTY DIVISION (formerly
Contra Costa County Title Co.)
SEP 17 1963
AT 2 O'CLOCK P M.
CONTRA COSTA COUNTY RECORDS
FEE $2.00 W. T. PAASCH
COUNTY RECORDER

THIS SPACE FOR RECORDER'S USE OR COUNTY RECORDER

GRANT DEED

(Individual Grantor)

Order No. M-270463

For value received MILTON P. BRUZZONE

GRANT S to JAMES M. BUXTON and VIRGINIA D. BUXTON, his wife, as joint tenants,

all that real property situate in the County of Contra Costa, State of California, described as follows:

Lot 1, map of Tract No. 2615, filed November 28, 1958, Map Book 71, page 29, Contra Costa County records.

Subject to the declaration recorded April 29, 1959, Book 3363, Official Records, page 173 and which declaration is made a part of this deed the same as if it were embodied herein.

WITNESS my hand this 17 day of September, 19 63.

Milton P. Bruzzone
Milton P. Bruzzone

STATE OF CALIFORNIA
County of Contra Costa } ss.

On September 17, 1963 before me Mary Caldera
a Notary Public in and for said County and State, personally appeared Milton P. Bruzzone
known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

WITNESS my hand and official seal.

Mary Caldera
Notary Public

Mary Caldera

GRANT DEED (Individual) END OF DOCUMENT

[illegible]

[illegible]

[illegible]

Internal Revenue Service

UNITED STATES INFORMATION RETURN FOR CALENDAR YEAR 1950

Dividend Paid	Taxpayer Identification Number	IBM Account Number
$298.80	131-12-2743	CE-7584-157-00

TO WHOM PAID

VIRGINIA C BLXTON
& MRS E R BROWN
517 PACCON RC.
OAKLAND CALIF 94606

467 197

BY WHOM PAID INTERNATIONAL BUSINESS MACHINES CORPORATION
ARMONK, NEW YORK 10504

13-0871985

DIAMOND HEAD AMBASSADOR APARTMENT

2957 Kalakaua Avenue
Honolulu, Hawaii 96815

September 5, 1972

Mrs. James Buxton
P. O. Box 311
Carnelian Bay
California 95711

Dear Mrs. Buxton:

We feel we must inform you as follows:

1. The share of stock, providing for the lease of apartment No. 108 in the Diamond Head Ambassador Hotel, Ltd. is owned by Mr. James M. Buxton.

2. It, the share of stock, and the Lease Agreement for No. 108 was sold, August 21, 1969, to Helen Marie Sterling by a sub-agreement between James Morgan Buxton and Helen Marie Sterling.

3. Our files also contain a copy of the indenture dated August 21, 1969 whereby you assigned the Lease Agreement and the stock certificate to James Morgan Buxton.

All of these documents are notarized and have been recorded in the State of Hawaii Land Court and Bureau of Conveyances.

We therefore could not permit your occupancy of the apartment without the written authority of Helen Marie Sterling, the present leaseholder.

Yours very truly,

/s/ Harold C. Redford
Harold C. Redford
Secretary-Treasurer

RECEIVED FROM

ACCOUNT NO. 17

MASON BROTHERS
INVESTMENT SECURITIES
1100 FIRST WESTERN BUILDING
OAKLAND, CALIFORNIA 94612
TELEPHONE 832-4344

No. R 8553

DATE MAY 26, 1969

VIRGINIA D BUXTON

THE SECURITIES AS LISTED BELOW DISPOSITION SOLD ONLY 5 SHS

NO. SHARES	DESCRIPTION OF SEC. NO.	CTF. NUMBERS	IN NAME OF AND DATE
5	INTERNATIONAL BUSINESS MACH CORP 31532	SL951946	VIRGINIA D BUXTON
	OVER DELIVERY OF 35 SHS		

MASON BROTHERS

BY SUKI

ORIGINAL

SAN FRANCISCO
601 California Street
Phone 981-0000

SACRAMENTO
900 Jay Building
Phone 444-0570

SAN JOSE
Bank of America Building
Phone 293-7370

MONTEREY
Professional Building
Phone 373-0000

MASON · BROTHERS

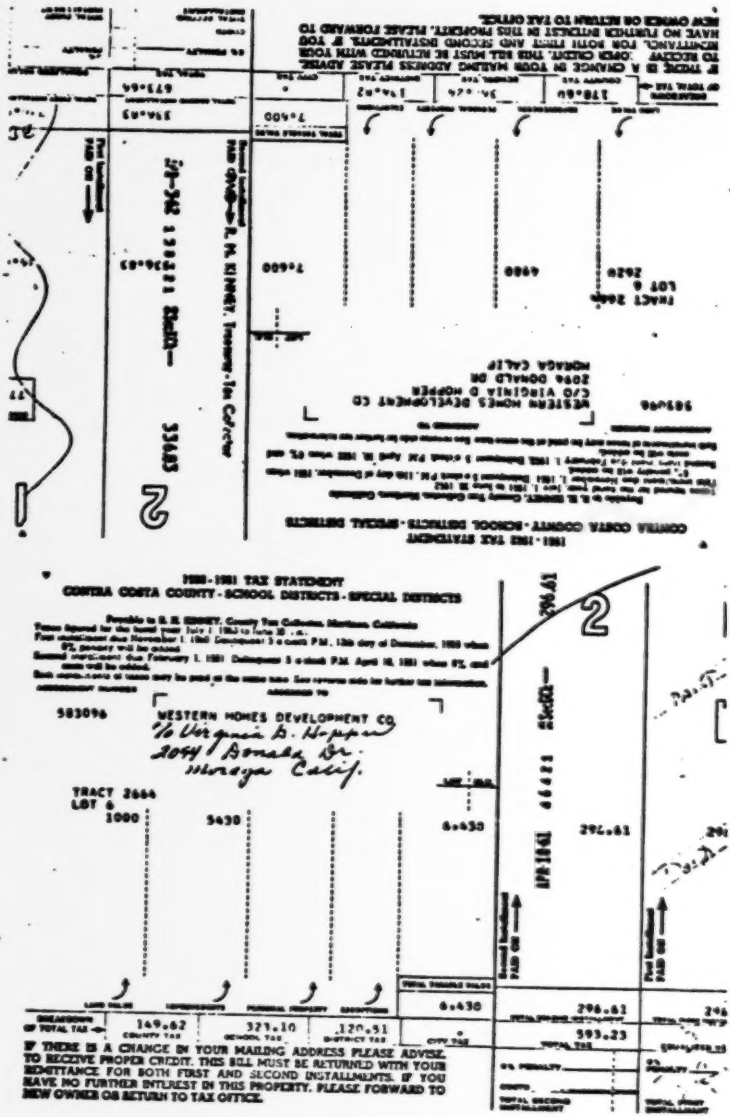
Investment Bankers

MEMBERS PACIFIC COAST STOCK EXCHANGE
1100 First Western Building · Oakland 12, California
AREA CODE 415 · 832-4344

Nov. 12, 1969

Mrs. Virginia D. Burton
5617 Victoria Road
Carmelian Lay, California 95711

DATE	#21335 DESCRIPTION	BOUGHT CR.	SOLD DR.	BALANCE
5/27/69	90 shs. I B M Received			
5/27/69	5 shs. I B M Sold		$ 1,624.96	
6/ 3/69	Check Issued	$ 1,624.96		-0-
6/12/69	5 shs. I B M Sold		1,558.71	
6/26/69	Check Issued	1,558.71		-0-
8/15/69	2 shs. I B M Sold		672.48	
8/19/69	Service Charge	2.00		
8/19/69	Check Issued	670.48		-0-
11/ 3/69	2 shs. I B M Sold		709.98	
11/10/69	Check Issued	709.98		-0-
11/10/69	10 shs. I B M Sold		3,652.42	
	Balance due you Settlement Date - 11/18/69			$ 3,652.42
	66 shs. I B M now in account.			


1980-1981 TAX STATEMENT
CONTRA COSTA COUNTY - SCHOOL DISTRICTS - SPECIAL DISTRICTS
583096
WESTERN HOMES DEVELOPMENT CO.
% Virginia B. Hopper
2044 Bonita Dr.
Moraga Calif.
TRACT 2664
LOT 6
1000
5430
6,430
296.61
149.62
329.10
120.91
593.23
IF THERE IS A CHANGE IN YOUR MAILING ADDRESS PLEASE ADVISE. TO RECEIVE PROPER CREDIT, THIS BILL MUST BE RETURNED WITH YOUR REMITTANCE FOR BOTH FIRST AND SECOND INSTALLMENTS. IF YOU HAVE NO FURTHER INTEREST IN THIS PROPERTY, PLEASE FORWARD TO NEW OWNER OR RETURN TO TAX OFFICE.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned does hereby assign and transfer to VIRGINIA D. BUXTON all of his right, title and interest in and to the furniture, furnishings and appliances situated in the house known as 5617 Victoria Road, Carnelian Bay, Placer County, California.

Dated: April 18, 1969.

James M. Buxton

SUPREME COURT, U. S.

FILED

FEB 20 1974

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1122

MARIAN VIRGINIA BUXTON, *In Propria Persona*,
Petitioner,

v.

INTERNATIONAL BUSINESS MACHINES CORPORATION,
Respondent.

BRIEF IN OPPOSITION TO THE GRANTING OF CERTIORARI

EARL M. WUNDERLI, ESQ.
Old Orchard Road
Armonk, New York 10504
914-765-4820

Of Counsel:

SCOTT E. WOLLASTON, ESQ.
Old Orchard Road
Armonk, New York 10504
914-765-4813

JOHN J. SHAY JR., ESQ.
Old Orchard Road
Armonk, New York 10504
914-765-4844

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TABLE OF AUTHORITIES

CASES:

Adickes v. *S. H. Kress & Co.*, 398 US 144 (1970) 4

Lawn v. *United States*, 355 US 339 (1958) 4

STATUTES:

28 U. S. C. Section 1254 1

28 U. S. C. Section 1291 3, 4

28 U. S. C. Section 1292 3

FEDERAL RULES OF CIVIL PROCEDURE:

Rule 12(b)(6) 2

OTHER AUTHORITIES:

Rule 19, Revised Rules, Supreme Court of the United States (1970, as amended to 1972) 1, 4

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1122

MARIAN VIRGINIA BUXTON, *In Propria Persona*,
Petitioner,

v.

INTERNATIONAL BUSINESS MACHINES CORPORATION,
Respondent.

BRIEF IN OPPOSITION TO THE GRANTING OF CERTIORARI

JURISDICTION

The Petitioner, in her Petition for a Writ of Certiorari, has not stated concisely the grounds upon which the jurisdiction of this Court is invoked. In essence she seems to state that her procedural and substantive rights of due process have been violated by the United States District Court, Southern District of New York, and the United States Court of Appeals, Second Circuit.

This Court does not have jurisdiction over this matter under 28 USC § 1254 (1948) or according to Rule 19 of the Revised Rules, Supreme Court of the United States (1970, as amended to 1972). There has been no decision in the Court of Appeals or the District Court upon which this Court's jurisdiction can be founded.

STATEMENT OF THE CASE

Mrs. Marian Virginia Buxton filed two substantially similar actions against the International Business Machines Corporation ("IBM") in the United States District Court

for the Southern District of New York. The actions were instituted on December 11, 1972 (72-CIV-5228) and January 2, 1973 (73-CIV-4). Defendant IBM moved to dismiss these actions under FRCP 12 (b) (6) on December 26, 1972, and February 5, 1973, respectively. Since the complaints had been drafted by the Petitioner, who was appearing pro se, and since it was difficult to discern her precise grounds for complaint and her theory of relief, Honorable Charles M. Metzner, U. S. D. J., on March 6, 1973, referred both motions, as well as motions for summary relief made by Petitioner, to Harold J. Raby, United States Magistrate.

In a report of April 12, 1973, Magistrate Raby recommended that 73-CIV-4 be dismissed by the Court because of the substantive matter contained in the Complaint, as well as because there was a prior action pending between the same parties and involving the same subject matter. This report is reprinted at page 1a of Appendix. The report was adopted on April 30, 1973, by Judge Metzner and this action was dismissed, with prejudice. This Memorandum & Order is reprinted at page 4a of Appendix.

In a second report on April 12, 1973, Magistrate Raby found that 72-CIV-5228 did state a cause of action for breach of a contractual obligation and for tortious withholding of stock. He recommended that IBM's motion to dismiss be denied, and also that Petitioner's motions for summary relief be similarly denied. This report is reprinted at page 5a of Appendix. The report was adopted by Judge Metzner and on April 30, 1973, he denied IBM's motion, without prejudice to IBM's right to move for summary judgment or other appropriate relief following its Answer to the Complaint. At the same time Judge Metzner denied Petitioner's motions for summary relief. (Order is at page 16a of Appendix.)

On May 11, 1973, Mrs. Buxton filed Notices of Appeals from the April 30, 1973, orders in both actions. On July 3, 1973, Mrs. Buxton filed with the Court of Appeals, Second Circuit, a "Notice of Consolidation of Appeals." This was denied on July 30, 1973.

On June 29, 1973, IBM moved to dimisss the appeal taken from the April 30 order in 72-CIV-5228. The basis of the dismissal was 28 USC §§ 1291 and 1292. Under 28 USC § 1291 the denial of a motion for summary judgment (as the court characterized Mrs. Buxton's motions for summary relief) is not a "final decision." On July 30, 1973, the Second Circuit granted IBM's motion and dismissed the appeal for lack of jurisdiction. The action was remanded for further proceedings. On November 16, 1973, the Second Circuit denied Mrs. Buxton's motion for a rehearing of its July 30 order.

Following the remand of 72-CIV-5228 to the District Court, IBM answered the Complaint and on June 4, 1973, IBM made a Motion for Summary Judgment. This Motion was granted by Judge Metzner on October 19, 1973. *An appeal has never been taken from this order.*

ARGUMENT

Mrs. Buxton in her Petition prays "that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered on November 16, 1973, in the above entitled cause." As stated earlier, the November 16, 1973, order of the Second Circuit Court of Appeals denied Mrs. Buxton's motion for a rehearing of the July 30, 1973, order which dismissed the appeal in 72-CIV-5228 for lack of jurisdiction. When the case was remanded and summary judgment was entered against her, Mrs. Buxton never took an appeal. There

similarly has been no decision by the Court of Appeals on the District Court's dismissal of 73-CIV-4.

Rule 19 of the Supreme Court Rules sets out the considerations which govern the review on certiorari. The matter will be reviewed "only where there are special and important reasons therefor." Subparagraph 1(b) states, among other reasons, that a matter would be considered where a court of appeals "has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision." This would seem to be what Petitioner is arguing. Yet it cannot be reasonably argued that Petitioner has been denied any of her rights in the courts below. The reports of Magistrate Raby indicate the extent to which the District Court accommodated Petitioner. The Second Circuit order of July 30, 1973, dismissing the appeal was clearly based on sound law, since it is clear that under 28 USC § 1291 the court had no jurisdiction to hear an appeal from an interlocutory order. There is no showing that the Court of Appeals at this time abused its discretion in denying the Motion to Consolidate the appeals. If the Petition is limited only to these orders of the Court of Appeals, as it must be, it must fail. The Petition cannot go *beyond* this and include a review of the merits of Petitioner's claim since Mrs. Buxton *has failed to appeal the District Court decision of October 19, 1973, which granted summary judgment in IBM's favor.* The Supreme will not consider the district court's dismissal of the action, where the petitioner had not raised the issue before the court of appeals. See *Adickes* v. *S. H. Kress & Co.,* 398 US 144 (1970). There are no exceptional circumstances which mandate such a review. See *Lawn* v. *United States,* 355 US 339 (1958).

CONCLUSION

There are no special or important reasons for this Court to grant the Petition for Certiorari and, therefore, an order should be entered denying certiorari.

Respectfully submitted,

.....
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APPENDIX

Report of United States Magistrate

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

73 Civ. 4

MARIAN VIRGINIA BUXTON,

Plaintiff,

—v—

INTERNATIONAL BUSINESS MACHINES
and
FRANK T. CARY, President, et al., Officers of IBM,

Defendants.

REPORT OF UNITED STATES MAGISTRATE

TO THE HONORABLE CHARLES M. METZNER, U. S. D. J.

This report relates to a motion filed by defendants on February 5, 1973 to dismiss this action pursuant to Rule 12(b) (6) for failure to state a claim upon which relief can be granted. The motion was referred by you to the undersigned Magistrate for hearing and report by order dated March 6, 1973, a copy of said order being appended hereto as Exhibit A. That order also referred to me an identical motion concerning an action involving the same parties heretofore filed on December 12, 1972, which is the subject of a separate report of even date.

The complaint in this case, drawn *pro se*, is a one page document consisting of three paragraphs; the first paragraph describes the plaintiff as the widow of James Morgan Buxton; the second paragraph alleges that, as a result of "perjured statements" by one Marjorie Sommers plaintiff was forced into "a reluctant marriage with her deceased husband". Nowhere in this paragraph is any reference

made to the defendants or an explanation of who Mrs. Sommers is. The last paragraph alleges as follows: "IBM, the employer of [plaintiff's husband], has practiced ridicule, theft, forced residence changes, lack of health care, physical brutality, verbal expressions of sadism, lewdness and disparagement, brutal treatment and fraud on plaintiff. Plaintiff prays prosecution of damages."

The allegations in the third paragraph are so general and conclusive that they clearly do not constitute a cognizable claim against the defendants. For that reason alone, the defendants' motion to dismiss should be granted. I might add, however, that the granting of this motion is further justified by the fact that identical general allegations of misconduct are to be found in a previously filed complaint (as to which I have recommended, in a separate report, the denial of a motion to dismiss, my recommendation being based on the fact that the earlier complaint also contains what I believe to be non-demurrable matter). In short, this action should be dismissed, not only because of the substantive contained in the complaint, but also because there is a prior action pending between the same parties and involving the same subject matter.

It is accordingly recommended that the defendants' motion to dismiss the complaint be granted, that the complant be dismissed without leave to plead over, and that judgment be entered accordingly.

Copies of this report have been mailed this date to the plaintiff and to defendants' counsel with the direction that any objections thereto should be filed in your chambers not later than ten days from the date hereof.

The following papers, considered by me on this motion (and consisting, in fact, of all of the previously filed papers in this case) are forwarded to you herewith:

Report of United States Magistrate

1. Summons, filed January 2, 1973.
2. Complaint, filed January 2, 1973.
3. Motion to dismiss complaint, filed February 5, 1973.

Dated: New York, N. Y.
April 12, 1973.

Respectfully submitted,

HAROLD J. RABY
United States Magistrate

Memorandum and Order

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

73 Civ. 4

MARIAN VIRGINIA BUXTON,

Plaintiff,

—*v*—

INTERNATIONAL BUSINESS MACHINES
and
FRANK T. CARY, President, et al., Officers of IBM,

Defendants.

MEMORANDUM AND ORDER

METZNER, D. J.:

The defendants above named having, by notice of motion filed February 5, 1973, moved, pursuant to Rule 12(b) (6) to dismiss the complaint herein for failure to state a claim upon which relief can be granted, and said motion having been referred to HAROLD J. RABY, United States Magistrate, for hearing and report, and on reading and filing the report of said United States Magistrate dated April 12, 1973, and due deliberation having been had, it is

ORDERED, that defendants' motion be, and hereby is, granted in all respects, and it is

FURTHER ORDERED, that the complaint be, and hereby is, dismissed, without leave to plead over, and it is

FURTHER ORDERED, that judgment may be entered by the Clerk dismissing the complaint, with costs.

Dated: New York, N. Y.
April 30, 1973.

CHARLES M. METZNER
Charles M. Metzner
U. S. D. J.

Report of United States Magistrate

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

72 Civ. 5228

MARIAN VIRGINIA BUXTON,

Plaintiff,

—v—

INTERNATIONAL BUSINESS MACHINES

and

FRANK T. CARY, President, et al., Officers of IBM,

Defendants.

REPORT OF UNITED STATES MAGISTRATE

TO THE HONORABLE CHARLES M. METZNER, U. S. D. J.:

This report relates to a motion filed December 26, 1972 by defendants, IBM and its officers pursuant to Rule 12(b)(6) F. R. C. P. for an order dismissing the complaint for failure to state a claim upon which relief can be granted. This motion was referred by you to the undersigned Magistrate, for hearing and report, by your order dated March 6, 1973, a copy of which is appended hereto as Exhibit A. (The aforementioned order also refers to me for like purpose a separate and identical motion to dismiss a second complaint by the same plaintiff against the same defendants bearing Civil Docket 73 Civ. 4, which will be the subject of a separate report.)

Pursuant to your Honor's direction, and in an effort to obtain clarification of the plaintiff's alleged grievances against the defendants, I communicated by letter with the plaintiff, and also with defendants' counsel, directing them

to appear before me on April 9, 1973, in order that I might obtain a better understanding of the basis for the plaintiff's allegations. In addition to being so notified by letter, the plaintiff was, in addition, personally notified by my secretary of the forthcoming hearing on April 9th. Nevertheless, plaintiff not only failed to appear for the scheduled hearing, but failed to notify the undersigned concerning her possible inability to attend. Under those circumstances, I was constrained to hear the defendants' counsel's oral argument in support of the motion to dismiss and in opposition to what may be characterized loosely as the plaintiff's "cross-motions".*

The papers before me respecting this matter may be listed and described as follows:

1. Plaintiff's civil (Pro Se) complaint, filed December 12, 1972, in which it is alleged substantially as follows:

(a) That the defendants have frightened the plaintiff's husband to his death, concealed the whereabouts of his body, and left the plaintiff, his widow, stranded without income;

(b) That the defendants have stolen, and/or forged endorsements concerning IBM stock certifi-

*The following day, April 10, 1973 at 2 P.M., the plaintiff appeared at my office evidently being under the erroneous impression that the date was then April 9th. I explained to plaintiff that the purpose of the hearing was primarily for me to obtain a better understanding of the allegations in her complaint but that I was compelled to proceed in her absence on April 9th, not having received any explanation for her nonappearance at that time. Plaintiff then proceeded to explain orally to me the basis and objectives of her action. Having heard such explanation, I can say that nothing in her explanation is inconsistent with my prior understanding of the nature of the complaint, as will hereinafter be discussed.

cates jointly owned by plaintiff and her husband;

(c) That the defendants have placed a "body tape" on the plaintiff;

(d) That the defendants have engaged in a "campaign of terror on the body" of plaintiff's husband;

(e) That the defendants have conspired to alienate the affections of plaintiff and her husband from each other;

(f) That the defendants have wrongfully deprived plaintiff, as her husband's beneficiary, of compensation payments due to her under IBM's pension plan;

(g) That by reason of the foregoing she is entitled to $1,000,000 damages.

2. Defendants' notice of motion to dismiss complaint filed December 26, 1972.

3. Motion for emergency relief, etc. and response to notice of motion to dismiss complaint, filed by plaintiff on January 17, 1973, in which plaintiff claims that she was "defrauded of her entire life savings", etc. through the actions of IBM to "mercilessly pillage, defame, undermine, enslave and to use at hard labor through the relentless pursuit of this company to conspire to enslave plaintiff." She also alleges that a representative of IBM subjected her to "slaps, reckless driving, coercion, threats, intimidation and lewd suggestions", etc.; and attempted to have the plaintiff

placed in a state asylum while plaintiff was attending the University of California. She closes this document by asking this Court to declare her husband dead and for an order directing the return of property allegedly withheld from plaintiff by IBM. Thus, in effect the plaintiff is moving for the very relief demanded in the complaint, so that this motion may be characterized as a motion for summary judgment in favor of the plaintiff.

4. Motion for temporary relief filed by plaintiff January 23, 1973 in which she repeats her request contained in the January 17th paper for "emergency relief against enslavement", etc. and asks in effect for a mandatory injunction demanding the return of her alleged property. This motion is, in effect, merely a supplement to, or embellishment of, the plaintiff's "motion for emergency relief".

5. "Amended brief" in "support of plea for emergency relief", filed March 5, 1973. This brief merely contains head notes and legal citations dealing with such subjects as Statute of Frauds, Fraudulent Conveyances, Investment Securities, Liability in Damages, Libel and Defamation, Rules of the Supreme Court, Secured Transactions, Shareholders' Actions and Federal Tort Claims. The legal citations have no bearing whatsoever on the allegations contained in the so-called complaint.

6. Motion filed March 30, 1973 by plaintiff to "add 5 xerox pages of exhibits" and "to state that twice she had secured vitriolic statements as to kill persons, e.g. Mr. Buxton, deceased husband of plaintiff, and a similar perjured statement on the part of Mrs. Marjorie

> Sommers in a court of law." In this paper, plaintiff claims that she was coerced and intimidated into marriage by harassment and threats, that she cannot stand the climate of Washington, D. C., and "begs relief from the court to order the return of the title to her apartment #108 at 2957 Kalahaua Avenue, Honolulu, Hawaii, while prosecuting a labor age discrimination suit on the west coast in hopes of obtaining work."

It is obvious, from an examination of the complaint in this case, that it is replete with redundant and irrelevant matter, much of which is wholly unrelated to the defendants, and some of which relates purely to alleged wrongs committed by the defendants against persons other than the defendant, notably the plaintiff's husband. Some of the content indeed borders on the irrational.

It is certainly not an easy complaint for defendants to answer, since each paragraph (none of which is even numbered) deals with a multitude of unrelated subjects, with the inevitable result that the defendants would be obliged either to deny the allegations of the complaint in its entirety, or to select or quote particular passages of the complaint which are admitted and deny the remainder of the allegations (or perhaps deny information sufficient to form a belief with respect thereto).

However, the defendants' motion does not address itself to any assumed difficulty in answering the allegations of the complaint. The motion is not made under Rule 12(e) F. R. C. P. for a more definite statement, but is rather made under Rule 12(b) (6) for dismissal on the ground that the complaint fails to state a claim upon which relief can be granted. Any such motion, which of course is in the nature of a general demurrer necessarily assumes (for the

purpose of the motion) the truth of any and all allegations in the complaint. This being so, it follows that even if some of the allegations in the complaint (assumed to be true for purposes of the motion) fail to state a claim on which relief can be granted, the complaint will nevertheless withstand a demurrer if it contains other allegations of fact which if true (no matter how factually improbable they may be) will entitle plaintiff to relief. It is in that context that the defendants' motion must be judged, for I reject any assumption by defendants that the complaint, read as a whole, is irrational.

Thus, I would have no hesitancy, for example, in recommending the dismissal of this complaint, if its allegations were limited to the charge that the defendants had committed wrongs against the plaintiff's husband, since any such claim would have to be asserted by the husband or by the lawful representatives of his estate in the event he were deceased. Similarly, I would have no hesitancy in recommending dismissal if the complaint were limited to general charges that the defendants had harassed plaintiff herself.

The fact is, however, that if one looks beyond some of the needless rhetoric in the complaint, one can readily find (albeit poorly expressed) the framework of a valid cause of action. As I understand the complaint, from my reading of it, the plaintiff is claiming that she and her husband, a retired employee of IBM, are the lawful joint owners of a number of shares of IBM stock, the proceeds of which have been wrongfully withheld from the plaintiff by the defendants. She further claims that her husband is deceased, and accordingly plaintiff, as her husband's beneficiary, is entitled to received pension payments from

the defendants under IBM's pension plan, but has been deprived of such payments. Thus, in effect, IBM is being charged both with breach of a contract obligation (under its pension plan) to plaintiff as a third party beneficiary, and also with tortious withholding of stock as to which plaintiff claims a proprietary interest as joint owner with survivorship rights. Quite clearly, such allegations are not demurrable.

Counsel for IBM has advised me, in that connection, that the complaint is correct in its allegations at least to the extent that plaintiff's husband is in fact a retired employee of IBM and that he was at least at one time the holder of IBM stock. IBM's counsel has further represented to me, however, (1) that Mr. Buxton is very much alive and regularly receiving his pension payments, (2) that the plaintiff has heretofore, by appropriate legal documentation, divested herself of whatever interests she may have had in the IBM stock in question, and (3) that the plaintiff is not entitled to any pension benefits so long as her husband, Mr. Buxton, is in fact alive.

Such oral representations, of course, cannot be considered as basis for granting the defendants motions to dismiss, but should rather be brought to this Court's attention by motion for summary judgment following defendants' answer to the complaint. Quite clearly, the validity of much of plaintiff's case depends entirely on whether her allegation to the effect that her husband is dead is objectively true. If it is established that he is in fact alive and if it is further established that the plaintiff has validly divested herself of her IBM stock interests, it would seem to follow that the case would then be dismissed. However, these are issues of fact which cannot under any circumstances be resolved on a motion to dismiss under

Rule 12 F. R. C. P., particularly since there are no affidavits accompanying the motion.

I should mention in passing that it appears from the papers before me that the plaintiff is a resident and citizen of Hawaii and I take judicial notice that IBM is a corporation whose principal place of business is in the State of New York and which is therefore a citizen of the State of New York for jurisdictional purposes. Accordingly, there is no question that this Court has jurisdiction of this action by reason of diversity of citizenship of the parties.

Accordingly, my recommendation is that the defendants' motion to dismiss the complaint under Rule 12(b) (6) for failure to state a claim upon which relief can be granted be denied, without prejudice, however to the right of defendants, if so advised, to move, subsequent to answer, for summary judgment under Rule 56. I would further recommend that the order disposing of this motion direct that an answer be filed within ten days. I believe, in that connection, that an answer which denies each and every allegation in the complaint, except to admit the prior employment by defendants of plaintiff's husband, and which affirmatively alleges that the plaintiff's husband is alive and that the plaintiff has divested herself of her stock interests would be an acceptable answer, in view of the infirmities of the *pro se* complaint.

It is also necessary for me to consider the so-called "cross-motion" or "cross-motions" by the plaintiff for "temporary relief", which I have characterized above as being essentially motions for summary judgment. Since the so-called motions are unaccompanied by affidavits in support thereof the motions cannot properly be considered on their merits.

Report of United States Magistrate

For the reasons stated, it is respectfully recommended that the following "motions" by the plaintiff be denied:

1. "Plea for emergency relief", etc., filed January 17, 1973.

2. Motion for "order for temporary relief" filed January 23, 1973.

3. "Plea for emergency relief" filed March 30, 1973.

I cannot close this report without expressing my regret that I did not succeed in bringing about a direct oral dialogue between the plaintiff and counsel for defendants in connection with my consideration of this motion. Any such dialogue might, in my view, have been helpful both to plaintiff and defendants. I say this because it appears to me that the defendants are caught in a cross fire in connection with a marital dispute between plaintiff and her husband, who plaintiff apparently feels has defaulted in his financial obligations to her—a default for which plaintiff attributes some responsibility to the defendants as her husband's corporate employer. Had the defendants been able, in the course of the hearing before me, to demonstrate to plaintiff's satisfaction that her husband is alive (and perhaps disclose his whereabouts) and also that IBM's obligations under its pension plan have been fulfilled, it might possibly be that the plaintiff might have been persuaded to withdraw this suit. As matters now stand, however, the only feasible resolution of the problems raised by this lawsuit is for me to recommend, as I have, the denial of the defendant's motion, without prejudice to a subsequent motion for summary judgment following the answer to the complaint.

Copies of this report have been mailed this date to the plaintiff and to defendants' counsel with the direction that any objections thereto should be filed in your chambers not later than ten days from the date hereof.

Dated: New York, N. Y.
April 12, 1973.

Respectfully submitted,

HAROLD J. RABY
United States Magistrate

Exhibit A, Appended to Report of United States Magistrate

Marian Virginia Buxton

v.

International Business Machines, et al. 72 Civ. 5228

Pro Se

Marian Virginia Buxton v. IBM, et al.

Pro Se 73 Civ. 4

The above actions were assigned to me on February 5, 1973 pursuant to direction by the Assignment Committee. A review of the pending motions indicates that a great deal of clarification is necessary to understand the relief requested by the plaintiff.

Consequently, the matters are referred to Magistrate Raby who shall notify the parties to appear before him as soon as practicable so that he might hear oral argument and report to this court his recommendations as to the disposition of the pending motions.

So ordered.

Dated: New York, N. Y.
March 6, 1973

CHARLES M. METZNER
U. S. D. J.

EXHIBIT A.

Memorandum and Order

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

72 Civ. 5228

MARIAN VIRGINIA BUXTON,

Plaintiff,

—v—

INTERNATIONAL BUSINESS MACHINES

and

FRANK T. CARY, President, et al., Officers of IBM,

Defendants.

MEMORANDUM AND ORDER

METZNER, D. J.:

The defendants above named having, by notice of motion filed December 26, 1972, moved, pursuant to Rule 12(b) (6) to dismiss the complaint herein for failure to state a claim upon which relief can be granted, and the plaintiff having filed various cross motions for summary relief under respective dates of January 17, 1973, January 23, 1973 and March 30, 1973, and said motions having been referred to HAROLD J. RABY, United States Magistrate, for hearing and report, and on reading and filing the report of said United States Magistrate dated April 12, 1973, and due deliberation having been had, it is

ORDERED, that the defendants' motion be, and hereby is, denied, without prejudice to said defendants' right to move for summary judgment, or other appropriate relief following answer to the complaint, and it is

FURTHER ORDERED, that the defendants shall serve and file their answer to the complaint herein not later than ten days from the date of entry of this order, and it is

FURTHER ORDERED, that the plaintiff's cross motions filed respectively on January 17, 1973, January 23, 1973 and March 30, 1973, be, and hereby are, denied in all respects.

Dated: New York, N. Y.
April 30, 1973.

CHARLES M. METZNER
Charles M. Metzner
U. S. D. J.